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STATE PASS TO USPTO FOR P. FOWLER AND J. TRACY
STATE PASS TO USTR FOR P. BURKHEAD

E.O. 12958: N/A

TAGS: [ETRD](#) [EINV](#) [PGOV](#) [PREL](#) [KIPR](#) [KMPI](#) [KU](#)
SUBJECT: FREEDOM AGENDA: USPTO IPR WORKSHOP SPURS LIVELY DIALOGUE BETWEEN U.S., KUWAITI JUDGES

Sensitive but unclassified, not for internet distribution.

¶11. (SBU) Summary and Comment. From April 29 - May 1, U.S. Patent and Trademark Office (USPTO) IPR experts, accompanied by U.S. federal judges, delivered a MEPI "Workshop on the Enforcement of Intellectual Property Rights." The three-day workshop drew participants responsible for IPR enforcement from the Ministries of Information, Commerce, Justice, Interior, and Health, as well as Kuwait Customs. In separate sessions for judicial participants, Kuwaiti judges engaged in heated discussions over mandatory sentencing versus judicial discretion, the judiciary's role in mediating IPR disputes, and specialized IPR courts. Although disagreeing with their U.S. counterparts on many points, several Kuwaiti judges remarked to Econoff that this was the first time members of the Kuwaiti judiciary had discussed, in detail, many of these issues amongst themselves. In a side meeting between U.S. female judges and Kuwaiti female lawyers, Dr. Badriya Al-Awadhi said she was preparing to mount a challenge to the unspoken ban on female judges in Kuwait. End Summary and Comment.

¶12. (U) From April 29 - May 1, USPTO, in conjunction with U.S. District Court judges James Rosenbaum, Susan Gauvey, and U.S. Court of International Trade judge Delissa Ridgeway, conducted a "Workshop on the Enforcement of Intellectual Property Rights." The workshop attracted participants from the Ministries of Information, Commerce, Justice, Interior, Health, as well as Kuwait Customs. Separate sessions were held for Kuwaiti judges and prosecutors. Workshop sessions covered topics ranging from international IPR protection standards to specific sessions involving border measures, inspection practices, litigation, sentencing, and a day-long case study on the role of judges in mediating IPR disputes. In addition to USG presenters, the workshop also included a presentation by Abdullah Al-Otabi, the Head of Systems and Services at Kuwait Customs, a lecture from a representative of the regional anti-piracy body, and sessions conducted by Kuwait-based private attorneys.

Judges: Judicial Discretion Trumps Minimum Sentences

¶13. (SBU) Sessions with judicial participants were particularly lively. While most of the Kuwaiti judges agreed that current sentences for IPR violators are not a deterrent, there was disagreement with the idea of mandatory sentences. Citing cultural reasons and the history of compensation for crimes committed (as opposed to punitive measures), many Kuwaiti judges, led on this particular issue by Judge Naief Al-Mutairat, argued that sentencing discretion is critical because not all IPR cases are alike, and mandatory sentences may over-punish some offenders. (Note: The argument about

over-sentencing appeared to be something of a canard, with the real issue being the prospect of relinquishing decision-making authority. End Note.) However, some judges did affirm the value of mandatory sentences, noting that less sentencing discretion would make imprisonment more common for violators.

¶4. (U) Judge Gauvey's session on mediation elicited strong opinions about the role of judges in IPR disputes. In general, Kuwaiti judges expressed discomfort with the idea of mediating between the parties because, they said, it would make them a party to the dispute itself. When Judge Gauvey explained that a different judge, other than the one trying the case, would act as the mediator in such cases, several Kuwaiti judges acknowledged the idea's value, but were unsure how the practice might work in Kuwait's judicial system, as mediation roles are currently played by private-sector attorneys. (Note: This discussion belied a fundamental difference in how Kuwaiti and American judges view their roles. Whereas the American judges saw themselves as solution-finders, the Kuwaitis saw themselves solely as arbiters in decisions for one party or another in a winner-take-all sense. End Note.)

¶5. (U) Judge Ridgeway discussed the role of specialized courts, both in general and relating specifically to IPR cases. The Kuwait judges agreed that specialization can be important, especially in IPR cases involving complex technology. They argued, however, that Kuwait already has specialized IPR courts, although Judge Ridgeway disagreed that what Kuwait has constitutes specialized courts.

Enforcement Personnel Frustrated with Judges

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¶6. (SBU) While attending the workshop sessions in good numbers, non-judicial enforcement personnel were not as active in most discussions. However, when discussing the current state of sentences for violators, many enforcement personnel expressed frustration that sentences are too light, undermining their work. In one particularly heated exchange, Manal Al-Baghdadi of the Ministry of Information's IP Department directly confronted the judges about weak sentences, drawing a pointed response from prosecutor Adnan Al-Jasser that sloppy raid reporting and incomplete case paperwork from the Ministries makes imposing stiff sentences difficult.

Judges Meet with Local Women Lawyers

¶7. (SBU) On the margins of the workshop, Judges Gauvey and Ridgeway met with Kuwaiti women lawyers Dr. Badriya Al-Awadhi, Suad Al-Tararwa, and Najla Al-Naki. According to Dr. Al-Awadhi, women now constitute more than 50% of law students at Kuwait University, and have equal opportunities and pay to male lawyers. However, Dr. Al-Awadhi noted the lack of female judges in Kuwait, attributing this to cultural tradition rather than a religious prohibition, and said she did not see this changing any time soon. She recently submitted her application to become a judge and was pressing for a formal response so that she could challenge the practice in court. Judge Ridgeway gave the women information about the American Women's Bar Association, and stated her eagerness to help further the cause of women in law in Kuwait. Post will explore MEPI-funded programs on this topic.

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